Council Agenda: 6-24-11 Agenda Item: 3,1



Memorandum

TO: Mayor and City Council

FROM: Councilmember

Donald Rocha

SUBJECT: Fiscal Reform Plan

DATE: June 20, 2011

Approved Don Roche Date 6/20/11	···········

INTRODUCTION

Council direction on May 24, 2011 concerning the City Managers Fiscal Reform Plan provided that the City Manager would perform analysis of several different alternatives, including the memo issued by the Mayor on May 13th, the bullet points Councilmember Constant distributed, and the memo that I issued on May 20th. It was my understanding that Staff would return to Council with the aforementioned information and cost analysis in order to facilitate a fully informed decision in respect to negotiation points with our bargaining units, pension reform direction, a proposed ballot measure, and potential declaration of a fiscal and public safety emergency. As of the distribution of this memorandum, it is my understanding that staff intends to communicate its Council directed analysis through a power point presentation, and may possibly release a staff report before the meeting. Given the lack of certainty that information will be provided in advance of the meeting, I have decided to focus on laying out a process and approach to negotiation that I believe will give us the best chance of coming to agreement. If staff does release the requested information in advance of the meeting, I am open to incorporating any valuable policy work into the direction I have suggested.

RECOMMENDATION

- A. Approve the Mayor's memo dated June 20, 2011, and respectfully request that the deferral dates be amended as follows:
 - 1. Council consideration of Item 3.1(a), declaration of fiscal and public safety emergency, will be deferred to the meeting at which the Council approves the Mayor's March Budget Message for Fiscal Year 2012-13, in order to give staff time to pursue all cost saving alternatives before resorting to an emergency declaration.
 - 2. Council consideration of item 3.1(b), discussion of draft ballot language for possible charter amendments, will be deferred to October 31, 2011, to allow staff time to engage with the bargaining units, as outlined in item B below.
- B. I have heard repeated concern from staff that they be given clear negotiating direction on retirement reform so that they can begin working with our bargaining units to find solutions. In order that negotiations may begin as soon as possible, I recommend that the Council adopt the following negotiating direction to be used only as a starting point for the retirement reform discussion:

1. Negotiate Under a Pledge of Cooperation and Agreement

Direct staff to use the framework for retirement reform negotiations agreed to by AEA IFPTE Local 21, CAMP IFPTE Local 21, and AMSP (included as Attachment A), including the deadline for negotiations of October 31st established as part of that framework, as a model for agreements with the remaining bargaining units.

2. Changes to the Existing Retirement System

Instead of beginning negotiations on 1st tier changes with a specific proposal and ballot measure language, staff is directed to begin by attempting to determine what level of 1st tier changes, if any, the bargaining units would support in categories listed below. The below categories are items i through o on page 2 of the Mayor's Adopted March Budget Message; I believe they are a better starting point for negotiation than the very specific proposals outlined in the Mayor's May 13 memo. As part of these initial discussions, staff shall not present the Mayor's May 13 memo as the sole City proposal. With that said, if agreement cannot be reached on this item through negotiation, the Council would preserve it's ability to consider the Mayor's memo or other proposal as outlined in item B5 below.

- The retirement age should be raised.
- Guaranteed annual increases in pension benefits should be eliminated.
- The rate of accrual for pension benefits should be lowered.
- Spiking of pension benefits should be prohibited, including lengthening the period used to calculate final average salary.
- Bonus payments for retirees should be eliminated, except for long term service retirees who fall below the poverty level.
- The maximum percentage of salary that retirement benefits are based on should be reduced.
- Unfunded retirement liabilities need to be addressed, including risk analysis and sharing of risk with employees.

3. 2nd Tier for New Employees

For purposes of beginning a discussion on 2nd tier, staff is directed to put forward the plan design in Attachment B, which I originally put forward at the May 24, 2011 Council meeting. We should treat this plan design as a basis for discussion, not as a formal proposal or final decision as to what benefit levels we want to implement. If this proposed plan design does not meet the target Council has established (a minimum normal cost of 12.4% with benefits greater than those provided by Social Security) benefit levels can be modified to bring the plan within council direction. This direction should not impede, disrupt, or preempt the discussion in Item #1 but should be on the table during, and/or after its conclusion. It is important to work collaboratively on this issue prior to the negotiation of new contracts and next fiscal year's budget adoption in order to continue the collaborative spirit that our Manager and bargaining units have developed.

4. If the Bargaining Units and Council Agree on 1st and/or 2nd Tier Changes
If bargaining units are willing to support 1st and/or 2nd tier changes at a level that is acceptable to the Council, staff will meet and confer with bargaining units on necessary municipal code changes or ballot measure language for charter amendments (if necessary, based on existing charter minimums) to effect such changes. The timeline

for such meet and confer process should preserve the Council's ability to place a measure in front of the voters at a March 2012 election.

- 5. If the Bargaining Units and Council Do Not Agree on 1st and 2nd Tier Changes
 If the Council decides that the 1st and/or 2nd tier changes the bargaining units are willing
 to pursue are insufficient, staff will agendize a Council decision on which specific 1st
 tier changes it wishes to pursue. Discussion regarding this decision should initially take
 place in closed session to allow for full discussion of legal issues and risk. Should the
 Council decide on a set of specific 1st tier changes and process to effect such changes,
 the City Manager will meet and confer with the bargaining units on potential municipal
 code modifications and/or ballot language for charter amendments (if necessary, based
 on existing charter minimums) necessary to effect such changes. The timing of the
 Council's decision on whether to pursue a ballot measure without the agreement of the
 bargaining units should preserve the Council's ability to put a measure on the ballot for
 a March 2012 election and provide the City adequate time to fulfill its meet and confer
 obligations.
- C. As part of the Council's deliberation on 1st tier changes, the Manager is directed to analyze the possibility of either exempting retirees who have been separated from the City for a long period of time from benefit changes, or changing their benefits to a lesser degree. The policy consideration here is that employees who retired long ago under lower benefit levels may be affected differently by 1st tier changes than more recent retirees. It is necessary to know prior to any implementation of any retirement reforms whether employees who retired 10, 15, or 20 years ago have significantly different pension levels, and how proposed 1st tier changes may affect them.

ANALYSIS

Fiscal and Public Safety Emergency

Declaring a fiscal and public safety emergency before we've conducted negotiations and meaningfully pursued all of our options is premature and might compromise efforts to solve the problem. The Public Law Journal article referenced in the Mayor's memo dated May 24th, entitled "Declarations of Fiscal Emergency: A Resurging Option for Public Entities Attempting to Deal With the Current Economic Climate" states on page 12 that the courts have found that before a public agency can impair its own contracts, a it must be able to show that it did not "impose a drastic impairment when an evident and more moderate course would serve its purpose equally well." In my opinion, we have not sufficiently explored all possible alternatives in order to demonstrate that there is not a more moderate course. Before taking a step that has already raised questions from rating agencies about the City's fiscal future, we should make every effort to resolve our problems prior to the declaration of an emergency.

Negotiation Direction

Now that we have concluded employee contract negotiations regarding compensation and are no longer operating under a tight budget timeline, we have a chance to really engage with our employee unions on pension reform in a more productive and less tense context. It is my hope that our City staff and bargaining units can sit down and work together to identify which reform measures we agree on and which we don't. Within these negotiations the City should fully evaluate on its merits *any* pension reform proposal, which could include an opt-in proposal, that realizes significant cost savings. The City's primary goal should be to work with its bargaining units to develop a package of reforms that protects city services in the interest of our residents.

By starting with a common goal, not a hard position, this approach is akin to interest based bargaining, and I think will give us the best chance of working meaningfully with the bargaining units. This approach is a departure from our past practice of exchanging proposals, but I think it has the potential to promote a more successful collaboration than our past efforts. If it does not succeed, we reserve the ability to move proposals through the negotiation process as has been our previous practice, as outlined in my recommendation B5.

CONCLUSION

There are two paths that we can choose to follow towards our goal: one is to identify our cost savings target on our own and implement them through contract negotiations and ballot measures, and the other is to identify those bargaining units willing to work with us and determine which issues we can address together. I prefer the later as a starting point. If the two sides are not able to find common ground, I am willing to discuss the former approach with my colleagues once we have exhausted negotiations. If this process does not provide reforms that are acceptable to the Council, then the Council can choose a different approach.

I believe that an atmosphere which is collaborative and engages employees as part of the solution should be our first choice. As we embark upon a reform effort fraught with legal questions, a collaborative solution may offer the best means of limiting our legal risk and implementing reforms on a quick timeline. Making an attempt to work with our unions is not only a fair approach, it is also pragmatic, and offers the best chance of avoiding a lengthy legal dispute.

Without the benefit of having the costs of the varying proposals in advance of our meeting, the best recommendation that I can make, and that I will feel comfortable suggesting, is direction on how to proceed in terms of process and a framework with proposed issues for consideration.

Attachment A

PLEDGE OF COOPERATION & AGREEMENT UPON A FRAMEWORK FOR RETIREMENT REFORM AND RELATED BALLOT MEASURE NEGOTIATIONS JUNE 17, 2011

CITY OF SAN JOSE

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ASSOCIATION OF ENGINEERS AND ARCHITECTS, IFPTE LOCAL 21 (UNITS 41/42 AND 43) CITY ASSOCIATION OF MANAGEMENT PERSONNEL, IFPTE LOCAL 21 ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL

- 1. The parties are fully committed to negotiating in good faith to reduce the costs of the Federated City Employees' Retirement System and to preserve critical City services and the employees who deliver those services.
- 2. The parties agree to negotiate concurrently on the issues of retirement reform and related ballot measure(s). Negotiation of retirement reform shall include pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits; the Supplemental Retiree Benefit Reserve (SRBR); an opt-in program in which current employees could voluntarily choose to opt-out of the current level of pension benefits into a lower level of benefits; and other items as identified through the negotiations.
- Although the negotiation sessions on retirement reform and related ballot measure(s) will not be public, all written proposals and correspondence exchanged will be made available to the public on the City's website.
- 4. Any party's relevant subject matter experts may attend negotiation sessions. By mutual agreement of the City and the Unions, other individuals may attend negotiation sessions.
- 5. It is understood that the parties shall each engage an actuary and work together to develop cost estimates. It is understood that the Annual Required Contribution (ARC) shall be determined by the Federated City Employees' Retirement System Board's actuary.
- 6. Estimated cost savings for any proposals during the negotiations shall be supported by analysis and data.
- 7. The parties agree to meet and confer in good faith and agree to complete the negotiation process by October 31, 2011. If the parties are unable to reach an agreement on retirement reform and/or related ballot measure(s) by October 31, 2011, the parties shall proceed to impasse, pursuant to the procedures outlined in the Employer-Employee Relations Resolution (EERR) #39367. In the event of impasse, AEA, AMSP and CAMP will participate in the impasse procedures collectively. As set forth in the Side Letters on Retirement Benefits for current and future employees dated March 23, 2011, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures on the issues of retirement reform (including pension, retiree healthcare and the Supplemental Retiree Benefit Reserve). The City Council expressly reserves the right to propose charter amendments in the form of ballot measure(s) at the conclusion of negotiations and any impasse procedures, subject to the above obligations.

Framework for Retirement Reform and Related Ballot Measure Negotiations Page 2 of 2

8. It is understood that, by participating in these negotiations, neither party waives any legal rights, including the Unions' or employee's rights to assert that certain benefits are vested.

FOR THE CITY

Debra Figone City Manager

Álex Gurza

Director of Employee Relations

Gina Donnelly

Deputy Director of Employee Relations

FOR THE UNIONS

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AEA IFPTE Local 21

Cal Denise MacKenzie

CAMP IFPTE Local 21

Dale Dapp

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Attachment B: Benefit Levels for 2nd Tier

Benefit	Recommendation
Retirement Age	Federated: 62 Public Safety: 57
Early Retirement Reductions	Allow early retirement provided that the benefit does not exceed the actuarial value of full retirement.
Formula	Federated: 2% per year of service for 30 years, to a maximum of 60% of final salary Public Safety: 21/3% per year of service for 30 years, to a maximum of 70% of final salary
COLA	Tied to Bay Area CPI and capped at 1.5%
City/Employee Share of Costs	50/50 split for 2 nd tier normal costs and unfunded liability
Final Salary	Final 3 year average
Health Care	Employees receive a fixed dollar amount for retiree healthcare costs based on how many years of service they have when they retire (as recommended by staff in the last paragraph of page 41 of MBA #1).
Service Credit	Change the definition of one year of service from 1739 pensionable hours to the number of hours typical Federated and typical Public Safety full time employees work per year.
Opt-in	Allow for an opt-in program for 1 st tier employees.